

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**RITA PLAZA,**

**Plaintiffs,**

**v.**

**MALNOVE INCORPORATED OF  
NEBRASKA,**

**Defendant.**

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**8:05CV461**

**ORDER**

On April 10, 2006, the plaintiff personally filed a response [8] to the court's scheduling order regarding the motion of Aaron F. Smeall for leave to withdraw as plaintiff's counsel. In her response, the plaintiff states:

I am my own lawyer.  
Date: 04-10-06  
s/ Rita [] Plaza  
8842 "M" St  
Apt 8  
Omaha NE 68127

Based on this representation, I find that counsel's Motion to Withdraw (#5) should be granted and that the April 13, 2006 hearing on the motion should be cancelled.

Regarding the progression of the case itself, I note that the defendant has not yet been served with summons. Rule 4(m) of the Federal Rules of Civil Procedure states in relevant part:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time....

The court file shows that this case was filed on September 28, 2005, and the 120-day period has expired. The plaintiff was previously given until April 17, 2006 to effect service or show cause why the case should not be dismissed without prejudice for failure to effect service and file proof of the same within the 120-day time limit specified in Fed. R. Civ. P. 4(m). Plaintiff will be given an extension of time to May 1, 2006 to serve the defendant with summons and a copy of the complaint, and file proof of service with the

court. If proof of service is not filed by May 1, 2006, I will recommend to the district court that this case be dismissed without prejudice for failure to effect service.

**IT IS ORDERED:**

1. The motion of Aaron F. Smeall for leave to withdraw as plaintiff's counsel [5] is granted, and the hearing now set for April 13, 2006 is cancelled. The Clerk shall terminate the appearance of Aaron F. Smeall and enter the plaintiff's appearance pro se.

2. The plaintiff shall keep the court informed of her current address at all times while this case is pending. Any failure to do so will constitute grounds for dismissal of this action without prejudice.

3. Plaintiff is given an extension of time until and including **May 1, 2006** to serve the defendant with summons and a copy of the complaint in accordance with Rules 4 and 5 of the Federal Rules of Civil Procedure, **and** to file proof of service with the court. If service is not effected and proof of service is not filed by **May 1, 2006**, I will recommend to the district court that this case be dismissed without prejudice for failure to effect service.

4. After an appearance has been filed by the defendant, the plaintiff shall serve upon that defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Litigants in this district usually serve copies of motions and other documents on adverse parties by first class mail, postage prepaid. The plaintiff shall include with each original document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to each defendant or the attorney of a represented defendant. It is a violation of the rules of court to send communications to the court without serving a copy on the other parties to the case.

5. The plaintiff is advised that she is bound by the Federal Rules of Civil Procedure and by the Local Rules of this court in the prosecution of this case. The federal rules are available at any law library, and the local rules are available at the office of the Clerk of Court, and also on the court's web site at [www.ned.uscourts.gov](http://www.ned.uscourts.gov).

**DATED April 10, 2006.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**